IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO.1297 OF 2005 WITH C.A.3145/2005

M/s. Aksons MechanicalEnterprises and anr.
...Appellants.

Vs.

M/s. Victory Alloy Steel Pvt. Ltd.
...Respondent.

Mr. Mahesh Menon for the Appellants.

Mr.V.K. Rambhadharan with N.S. Rodrigues for the Respondent.

CORAM : R.S. MOHITE, J.

DATED: 10/8/2005.

P.C.:

1. This appeal has been filed by the appellants impugning Judgment and decree passed by the Joint Civil Judge, S.D. Kalyan on 17.1.2005 directing the defendant Nos. 1 and 2 jointly and severally pay to the plaintiffs sum of Rs.3,36,392.82ps. alongwith interest at the rate of 10% per annum from the date of filing of the suit till realization of the same. The Advocate for the respondent has filed compilation of documents which contains all the relevant exhibits referred to in the judgment. From the judgment and order, it is apparent that the plaintiffs' claim of Rs.3,36.392.82ps. was in lieu

of outstanding dues of the goods supplied on 4.12.2000 and 11.8.2001 with interest thereon at the rate of 18% per annum which comes to Rs.1,16,055.52ps. The plaintiffs' claim was based on the basis of five purchase orders dated 30.9.2000, 17/20.12.2000, 26/12.2000 & 17.1.2001 which were collectively marked at Exh.26. The delivery of the goods was proved by 10 delivery challans which were collectively exhibited as Exh.40 and corresponding 10-invoices/bills exhibited collectively as Exh.39. All these documents were admitted by the defendant no.2. In fact, it was fairly conceded by the Advocate for the appellant that they did not dispute the delivery of the goods delivered to them. What was sought to be argued that certain valuable dyes which had been given by the appellants to the respondent were not returned. However, there was no counter claim in this regard hence, this argument will have to be discarded. It is further argued that Kalyan Court would have no jurisdiction to decide the case as the parties have agreed that jurisdiction would be at Bombay. In this regard, my attention was drawn to the document at Exh.26 collectively. That does not contain any jurisdiction clause. Be that as it may, it is pointed out by the Advocate for the respondent that

as the delivery challans indicated that the goods purchased by the defendant from the plaintiffs' company at Badlapur and came to be delivered by the plaintiffs to the defendant from time to time from their foundry at Badlapur. It was contended that the defendants had accepted the delivery of the goods at the plaintiffs' foundry at Badlapur and transported the same at Badlapur to their place at Wagale Estate, Thane. Apart from this, the court has relied upon Exh.28 which is letter dated 19.12.2001 in which the plaintiffs have categorically admitted its liability to pay Rs.3/- lacs. It appears that even after this letter they received further goods and the claim of the said goods is added in the present claim. In the circumstances, I feel that there is no error in the Judgment of the Trial Court. First appeal is therefore, summarily rejected.

3. In view of the dismissal of the first appeal, civil application stands disposed of.

(R.S. MOHITE, J.)